

**SUPREME COURT OF ARKANSAS**

No. 12-500

POROCEL CORPORATION  
PETITIONER

V.

CIRCUIT COURT OF SALINE  
COUNTY, ARKANSAS; BOOKER T.  
WASHINGTON, JR.  
RESPONDENTS**Opinion Delivered** April 25, 2013APPEAL FROM THE SALINE  
COUNTY CIRCUIT COURT,  
[NO. 63CV-12-39-2]HONORABLE GARY M. ARNOLD,  
JUDGEPETITION FOR WRIT OF  
PROHIBITION GRANTED.**JIM HANNAH, Chief Justice**

Porocel Corporation petitions this court for a writ of prohibition in response to the Saline County Circuit Court's denial of its motion to dismiss. Porocel seeks to prevent the circuit court from exercising jurisdiction over the complaint of Booker T. Washington, Jr., on the grounds that the Arkansas Workers' Compensation Commission (the "Commission") had exclusive jurisdiction over the claims alleged in the circuit court and because Washington's exclusive remedy was under the Arkansas Workers' Compensation Act ("WCA"). We grant the petition.

Washington initially filed a claim against Porocel with the Commission, alleging "exposure to asbestos and silica dust resulting in lung disease and silicosis." On October 31, 2011, the Administrative Law Judge ("ALJ") issued an opinion in which he found from the parties' stipulations that Washington became disabled in June 2008 from his alleged exposure

to asbestos and silica dust and that any potential injurious exposure took place before June 18, 2008, when his employment at Porocel ended. The ALJ further found that Washington's claim, which was not filed until September 6, 2011, was barred by the statute of limitations set forth in Arkansas Code Annotated section 11-9-702(a)(2)(B) (Supp. 2011).

Washington did not appeal the ALJ's order. Instead, on January 13, 2012, Washington filed suit against Porocel in circuit court, alleging negligence; strict liability; breach of implied warranty; gross, willful, and wanton and/or misconduct, fraud; and unjust enrichment. Washington alleged that he worked for Porocel from approximately 1980 to 2007 and developed occupational lung disease due to exposure to toxic chemicals at Porocel's premises. According to Washington, he was diagnosed with occupational lung disease on August 15, 2011.

Porocel filed a motion to dismiss pursuant to Arkansas Rule of Civil Procedure 12(b)(1) and (b)(6) and Arkansas Code Annotated section 11-9-105(a) and contended that the Commission had exclusive jurisdiction of the claims alleged and that Washington's exclusive remedy was under the WCA. In response, Washington contended that the WCA requires that occupational diseases like silicosis occur "within a certain time after exposure" for workers' compensation benefits to be recoverable and that, "[a]s a result, the employer is protected by the [WCA] for only a specified period of time after exposure." Washington contended that, due to the timing of his last exposure and date of diagnosis, the applicable statute of limitations caused him to have no remedy against Porocel under the WCA and rendered his alleged disease to be one "not covered" under the WCA. Washington further

contended that, because he was exposed to harmful dusts at work, he carried toxins on his clothing and footwear, resulting in the contamination of his home, where he continued to be exposed. He contended that, because the WCA's definition of a compensable injury excludes injuries suffered at home and injuries sustained when employment services are not being rendered, the injuries resulting from his exposure at home did not occur within the course and scope of his employment and were not compensable under the WCA.

After a hearing, the circuit court entered an order denying Porocel's motion to dismiss. The order contained the following relevant findings:

The Court notes that a review of Ark. Code Ann. § 11-9-601(g) shows that the Plaintiff's claims of an occupational disease were not provided for in the Act since the Plaintiff's diagnosis and disablement occurred beyond the Act's statute of limitations of three years from the last date of exposure—not diagnosis of disease and disablement. Further, in the Plaintiff's First Amended Complaint, the Plaintiff alleged that toxic substances were on his clothing and his exposure continued after work and not in the course of employment and he was not performing employment services, when [he] was further injured. Ark. Code Ann. § 11-9-102 et seq. provides that an injury is not compensable unless it arises out of, and occurs within the course of employment, at a time when the worker was performing employment services. The Court finds that the Plaintiff's proof demonstrated that his occupational disease was not one for which the Act provides coverage.

After the order was entered, Porocel petitioned this court for a writ of prohibition to prevent the circuit court from exercising jurisdiction over Washington's complaint.

A writ of prohibition is extraordinary relief that is appropriate only when the circuit court is wholly without jurisdiction. *Int'l Paper Co. v. Clark Cnty. Cir. Ct.*, 375 Ark. 127, 289 S.W.3d 103 (2008). When considering a petition for a writ of prohibition, this court confines its review to the pleadings in the case. *Id.* Prohibition is a proper remedy when the jurisdiction of the trial court depends upon a legal rather than a factual question. *Id.*

Prohibition is never issued to prohibit a trial court from erroneously exercising jurisdiction. *Id.* Writs of prohibition are prerogative writs, extremely narrow in scope and operation; they are to be used with great caution and forbearance. *Id.* They should issue only in cases of extreme necessity. *Id.* This court has stated that where encroachment on the jurisdiction of the Workers' Compensation Commission is clear, a writ of prohibition is clearly warranted. *Id.*; *Erin, Inc. v. White Cnty. Cir. Ct.*, 369 Ark. 265, 253 S.W.3d 444 (2007); *W. Waste Indus. v. Purifoy*, 326 Ark. 256, 930 S.W.2d 348 (1996); *Hill v. Patterson*, 313 Ark. 322, 855 S.W.2d 297 (1993).

Generally, an employer who has secured for its employees the benefits of workers' compensation is immune from liability for damages in a tort action brought by an injured employee. *See Clark, supra.* This rule, known as the exclusivity doctrine, arises from Arkansas Code Annotated section 11-9-105(a) (Repl. 2012), which provides that "[t]he rights and remedies granted to an employee subject to the provisions of this chapter, on account of injury or death, shall be exclusive of all other rights and remedies of the employee." In contrast, a worker whose injury is not covered by the WCA is not precluded from filing a claim in tort against his employer. *Automated Conveyor Sys. v. Hill*, 362 Ark. 215, 218, 208 S.W.3d 136, 139 (2005).

In the instant case, before filing suit in the circuit court, Washington filed a claim at the Commission and sought compensation from Porocel for silicosis, an occupational disease, and the Commission found that Washington's claim was time-barred. Washington contends that, because the Commission found that his claim was time-barred, his occupational disease

was not covered under the WCA. Therefore, Washington claims, he is free to bring suit against Porocel in circuit court. Porocel contends that a finding that Washington's claim is time-barred is not the same as a finding that Washington's alleged occupational disease was not covered under the WCA so as to avoid its exclusive-remedy provision. Porocel maintains that there is no exception to the exclusive-remedy provision for an employee who fails to file a timely claim with the Commission for a covered occupational disease.

An employee must file a timely claim to recover under the WCA. “[A] claim for compensation for disability on account of silicosis . . . must be filed with the commission within one (1) year after the time of disablement, and the disablement must occur within three (3) years from the date of the last injurious exposure to the hazard of silicosis.” Ark. Code Ann. § 11-9-702(a)(2)(B). Thus, Washington had to meet two requirements to recover: (1) his time of disablement must have occurred within three years from the date of the last injurious exposure, and (2) his claim for compensation had to be filed within one year after the time of disablement. See *Quality Excelsior Coal Co. v. Smith*, 233 Ark. 67, 70, 342 S.W.2d 480, 481 (1961).

Washington stipulated before the Commission that the time of his disablement was June 2008 and that “[a]ny potential ‘injurious exposure’ would have occurred before June 18, 2008.” Washington clearly met the first requirement, as his disablement and last injurious exposure occurred in the same month. He did not, however, meet the second requirement. Washington's time of disablement occurred in June 2008; therefore, pursuant to Arkansas Code Annotated section 11-9-702(a)(2)(B), he was required to file his claim by June 2009.

However, Washington did not file his claim until September 6, 2011. Washington states that he did not file a claim for compensation within the one-year limitation period because he was not diagnosed with silicosis until after the expiration of that period. But Washington's date of diagnosis is not controlling under the WCA. In silicosis cases, the statute begins to run at the time of disablement, not at the time the claimant learns that he is suffering from the disease, and disablement does not occur until the employee is unable to work and earn his usual wages. See *Ark. Coal Co. v. Steele*, 237 Ark. 727, 730, 375 S.W.2d 673, 675 (1964); *Smith*, 233 Ark. at 70, 342 S.W.2d at 482; *Rannals v. Smokeless Coal Co.*, 229 Ark. 919, 921, 319 S.W.2d 218, 220 (1959); *Hamilton v. Jeffrey Stone Co.*, 6 Ark App. 333, 336, 641 S.W.2d 723, 725 (1982).

Here, Washington's time of disablement was within three years of his last injurious exposure, so Washington's injuries were covered under the WCA.<sup>1</sup> Washington had a remedy in this case under the WCA, but he failed to avail himself of the remedy when he did not file his claim within the one-year limitation period.

Any statute of limitations will eventually operate to bar a remedy, and the time within which a claim should be asserted is a matter of public policy, the determination of which lies almost exclusively in the legislative domain. *E.g.*, *Minn. Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). The decision of the General Assembly in that regard will not be interfered with by the courts in the absence of palpable error in the exercise of the legislative

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<sup>1</sup>We need not consider whether injuries are covered if the time of disablement does not occur within three years of the last injurious exposure.

judgment. *Id.* The General Assembly has fixed one year from disablement as the time for workers suffering from silicosis to discover and assert their claims with the Commission. We recognize that the one-year limitation period operates harshly in this case, but if there is any inequity here, it must be addressed by the General Assembly. The court cannot refuse to give the statute of limitations effect merely because it seems to operate harshly. *See Miller v. Everett*, 252 Ark. 824, 481 S.W.2d 335 (1972). Because Washington's disablement occurred within three years of his last injurious exposure, we hold that Washington's claim is covered by the WCA, and we grant Porocel's request for writ of prohibition.

Finally, we do not have jurisdiction to address Porocel's argument that Washington cannot escape the exclusivity doctrine of the WCA by claiming that some of his exposure to silica dust occurred at home. The rights and remedies granted to employees under the WCA, found at Arkansas Code Annotated 11-9-101 to -1001, are within the exclusive jurisdiction of the Commission. In addition, the Commission has exclusive, original jurisdiction to determine the fact issues establishing its jurisdiction, unless the facts are so one-sided that the issue is no longer one of fact but one of law, such as an intentional tort. *Van Wagoner v. Beverly Enters.*, 334 Ark 12, 970 S.W.2d 810 (1998).

In this case, the circuit court lacked jurisdiction to determine whether Washington's alleged disease from his exposure at home is covered under the WCA.<sup>2</sup> That determination lies exclusively with the Commission, as the facts presented below are not so one-sided as to demonstrate that the WCA does not apply as a matter of law. When the circuit court lacks

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<sup>2</sup>Washington did not raise this issue before the Commission.

jurisdiction, the appellate court also lacks jurisdiction on appeal. *E.g.*, *Miller v. Enders*, 2010 Ark. 92.

Petition granted.

Special Justice EUGENE BRAMBLETT joins.

CORBIN, J., not participating.

*Munson, Rowlett, Moore, & Boone, P.A.*, by: *Jason Lee* and *Ashleigh Dale Phillips*, for petitioner.

*Edward O. Moody* and *Robert S. Tschiemer*, for respondent Washington.

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